

### **REMARKS/ARGUMENTS**

This amendment is submitted in response to the Office Action dated November 24, 2004. After entry of this amendment claims 1-13, and 21 will be pending in the application. The claims have been amended to correct 35 U.S.C. § 112, second paragraph issues and overcome the drawing objection. Reconsideration and allowance is respectfully requested in view of the amendments made and the remarks made below.

#### **1. The §112 Rejections**

Claim 21 was rejected in the Office Action under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Office Action argues that the Specification and the Drawings do not disclose having the tamper evident band as being unitary at a first location with said body portion and being integral at a second location with said lid portion. In order to further prosecution the Applicant has removed the offending language from claim 21. Claim 21 as amended is fully supported by the Specification and Drawings.

The Applicant respectfully submits that these amendments have removed any 35 U.S.C. §112 issues and earnestly requests the removal of the rejection under 35 U.S.C. §112, first paragraph.

Claims 2-13 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. In particular, the Office action argues that it is unclear what is meant by a "hinge type" closure. In response, the Applicant has amended claims 2-13 to correspond with the language found in the preamble of claim 1. The Applicant submits that claims 2-13 as amended overcome the rejection and earnestly requests notification to that effect.

#### **2. The Drawing Objection.**

The Office Action objects to the drawings under 37 CFR §1.83(a) stating that every feature of the invention specified in the claims must be shown. In particular, the Office Action argues that the features claimed in claim 21 are not shown in the drawings. In order to further prosecution the Applicant has amended claim 21 to remove the offending features.

The Applicant respectfully submits that this amendment overcomes the objection to the drawings and requests notification to that effect.

**3. The Rejection Under 35 U.S.C. § 102(e)**

The Office Action rejected claims 1-10 and 21 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,644,487 to Smith et al. (hereinafter "Smith"). The Applicant respectfully submits that this rejection is in error. Smith has a filing date of August 17, 2001. The Applicant's filing date is July 24, 2001. The Applicant's filing date is earlier than Smith's filing date; therefore Smith cannot be used as prior art against the Applicant.

The Applicant requests removal of the rejection based on Smith.

**4. The Rejections under 35 U.S.C. §102(b)**

Claims 1, 3-8,10-13, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,799,840 to Mogard (hereinafter "Mogard"). The Applicant respectfully submits that Mogard does not disclose each and every limitation of claims 1, 3-8,10-13, and 21.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Office Action states that Mogard anticipates claims 1, 3-8,10-13, and 21, by stating that "The abstract discloses the tamper evident band 280 is ultrasonically sealed to the container. The gripping projection is represented by reference character 300."

Mogard discloses a tamper evidence structure 275, shown in Figures 6-9. The tamper evidence structure 275 includes an L-shaped portion 280 having first and second arms. In order to open closure 10, a user grasps the gripping arm 300 and tears the first arm 285 from the cap 35 in the region of the tear joint 295. As can be seen in Figure 6, when the gripping arm is grabbed and torn, there is nothing left of the tamper evidence structure 275 attached to the lid. Second arm 290 is bonded to either flange 25, or the container and therefore is not integral with the body portion and is instead unitary. First arm 285 is removed from the lid portion altogether. There is no part of the tamper evidence structure 275 that remains integral with cap 35. Once first arm 285 is removed, cap 35 opens like a standard cap.

Therefore, the tamper evidence structure taught by Mogard does not meet the limitation of claim 1, requiring a “tamper evident band being integral at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure.” Mogard does not disclose having a tamper evident band unitary with the body portion. Additionally, Mogard does not have a tamper evident band that mechanically secures the lid. Mogard further does not meet the limitation of claim 21 requiring a “tamper evident band being unitary at a first location with said lid portion, and further being integral at a second location with said body portion, whereby said closure may not be opened without defeating said tamper evident band.” Mogard does not disclose having a tamper evident band unitary with the body portion or mechanically securing the lid portion to the body.

The Applicant respectfully submits that Mogard does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 3-8, and 10-13 are also in condition for allowance due to their dependence upon an allowable base claim.

Claims 1, 4, 10, 13, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,941,592 to Kitterman (hereinafter “Kitterman”). The Applicant respectfully submits that Kitterman does not disclose each and every limitation of claims 1, 4, 10, 13, and 21.

The Office Action rejects claims 1, 4, 10, 13, and 21 stating, “The embodiment illustrated in figures 8-11 discloses the tamper evident band 150 is unitary with the lid portion 114 at 152 and integral with the body 112 by locking step 160.”

Kitterman discloses a locking post 150. Locking post 150 is not integrally connected with the body 112. Instead, when the lid 114 is forced upwardly, or the locking post 150 is forced downwardly, the locking post 150 separates from the lid 114 and drops onto the deck or into the body to permit opening of the lid about the hinge structure. When the lid 114 is then closed, notch 146 is then open. This opening serves as notice to a person that the lid has been opened. See col. 5, lines 59-68. The locking post 150 is never integrally connected with the body. It is merely prevented from falling until the lid 114 is opened. Furthermore, it does not remain attached to either the body portion or the lid portion.

Therefore, the locking post 150 does not meet the limitation of claim 1 requiring a “tamper evident band being integral at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure.” The locking post is not integral with the body portion. Furthermore, the locking post does not remain attached to the body portion or the lid portion upon opening of the closure. Kitterman also does not meet the limitation of claim 21 requiring a “tamper evident band being unitary at a first location with said lid portion, and further being integral at a second location with said body portion, whereby said closure may not be opened without defeating said tamper evident band.” The locking post is not integral with the body portion. Additionally, claim 21 requires “a drinking spout that is constructed and arranged to facilitate drinking from the container.” The container and lid in Kitterman is a dispensing container. Discharge passage 22 is not constructed and arranged to facilitate drinking.

The Applicant respectfully submits that Kitterman does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 4, 10 and 13 are also in condition for allowance due to their dependence upon an allowable base claim.

Claims 1, 3-10, 13, and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,386,918 to Neveras et al. (hereinafter “Neveras”). The Applicant respectfully submits that Neveras does not disclose each and every limitation of claims 1, 3-10, 13, and 21.

The Office Action rejects claims 1, 3-10, 13, and 21 stating, “The tamper evident band 19 is integral with the body portion upon engagement of body nibs 37 with the recesses 27 of the tamper evident band.”

Neveras discloses a dispensing container for toothpaste or gel. See col. 4, lines 55-56. Neveras discloses a tear band 19 that is removed from the lid 3. Tear band 19 is attached to the lid 3 by bridging portions 35. Recesses 27 are provided between the tear band and lid 3. The pressure between the band 19 and the lid 3 secures nibs 37. The tamper evident band in Neveras is completely removed in opening the container. The tear band retains the body portion due to

the pressure the tear band exerts on the nibs 37. There is no portion of the tear band 19 that remains after removal.

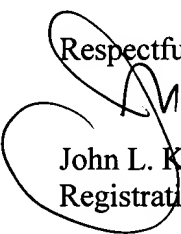
Therefore, Nevaras does not meet the limitation, as required in claim 1, of a "tamper evident band being integral at a first location with said body portion and further being unitary at a second location with said lid portion, whereby said closure may not be opened without defeating said tamper evident band, and wherein said tamper evident band is designed to remain attached to at least one of said body portion and said lid portion upon opening of said closure." There is no portion of the tamper evident band that remains attached to either the body portion or the lid portion upon opening of the closure. Nevaras further does not meet the limitation of claim 21 requiring "a drinking spout that is constructed and arranged to facilitate drinking from the container." Nevaras discloses a nozzle 7 that is used for toothpastes and gels. A nozzle is not a structure that facilitates drinking from the container. Furthermore, Nevaras does not contemplate using this structure for a drinking container.

The Applicant respectfully submits that Nevaras does not meet the limitations of independent claims 1 and 21 and requests notice to that effect. Claims 3-10, 13 are also in condition for allowance to their dependence upon allowable base claims.

## **5. Conclusion**

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,

  
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